

REGULAR MEETING OF THE OKLAHOMA WORKERS' COMPENSATION COMMISSION

APPEALS

Friday, February 17, 2023
9:00 a.m.
Commission En Banc Courtroom
1915 N. Stiles Ave.
Oklahoma City, Oklahoma
www.wcc.ok.gov

AGENDA

CALL TO ORDER **Commission's Chair, Chairman Russell**
ROLL CALL **Presiding Appellate Officer, Commissioner Tilly**
BUSINESS **Presiding Appellate Officer, Commissioner Tilly**

STATEMENT OF COMPLIANCE BY CHAIRMAN

THE FOLLOWING MATTERS ARE PRESENTED FOR CONSIDERATION AND ACTION, IF ANY, DEEMED APPROPRIATE BY THE COMMISSION

A. MINUTES:

- The drafted Minutes of the Regular Appeals Meeting of January 27, 2023 will be considered for approval.

B. Appeal Hearings before the Commission En Banc from Orders Issued by the Commission's Administrative Law Judges

The hearings before the Commission en banc will be conducted pursuant to the authority and jurisdiction of the Administrative Workers' Compensation Act, Title 85A O.S. § 1 et seq., and the Workers' Compensation Commission's Permanent Rules, OAC 810. The Commissioners may recess for lunch.

The procedure for the hearings before the Commission en banc is as follows:

- Each side will be allowed ten (10) minutes for oral arguments.
- The appellant will present first. Appellant may divide his or her ten minutes for argument, allowing a portion of that time for rebuttal.
- Both parties are subject to questioning by Commissioners.

1. **Andrew Little v. City of Tulsa (OWN RISK #10435), File #CM3-2015-01112R**

Respondent filed an appeal from the order issued by Administrative Law Judge Inhofe. D. Eliot Yaffe is the attorney of record for the Claimant and Travis R. Colt is the attorney of record for the Respondent.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; affirming the order and decision of the Administrative Law Judge and issuing an order to that effect; or taking preliminary action in the matter to reverse, modify, or remand. If the Commissioners do not fully affirm the order of the Administrative Law Judge, the Commission may instruct Appellate Counsel or staff to draft a proposed order to be considered in further deliberations and at a future Commission meeting.

2. **Shawn Holland v. City of Tulsa (OWN RISK #10435), File #CM3-2018-04265Q**

Respondent filed an appeal from the order issued by Administrative Law Judge Inhofe. Kathryn Black is the attorney of record for the Claimant and Leah P. Keele is the attorney of record for the Respondent.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; affirming the order and decision of the Administrative Law Judge and issuing an order to that effect; or taking preliminary action in the matter to reverse, modify, or remand. If the Commissioners do not fully affirm the order of the Administrative Law Judge, the Commission may instruct Appellate Counsel or staff to draft a proposed order to be considered in further deliberations and at a future Commission meeting.

3. **Eva Handle v. MITF, File #CM3F-2018-02950L**

Claimant filed an appeal from the order issued by Administrative Law Judge Inhofe. David P. Reid is attorney of record for the Claimant and Travis R. Colt is the attorney of record for the Respondent.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; affirming the order and decision of the Administrative Law Judge and issuing an order to that effect; or taking preliminary action in the matter to reverse, modify, or remand. If the Commissioners do not fully affirm the order of the Administrative Law Judge, the Commission may instruct Appellate Counsel or staff to draft a proposed order to be considered in further deliberations and at a future Commission meeting.

4. **Andrea Green v. First Transit Inc. and New Hampshire Insurance Co., File #CM3-2019-01317J**

Claimant filed an appeal from the order issued by Administrative Law Judge Blodgett. Robert L. Smith is the attorney of record for the Claimant and Kevin E. McCarty is the attorney of record for the Respondent.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; affirming the order and decision of the Administrative Law Judge and issuing an order to that effect; or taking preliminary action in the matter to reverse, modify, or remand. If the Commissioners do not fully affirm the order of the Administrative Law Judge, the Commission may instruct Appellate Counsel or staff to draft a proposed order to be considered in further deliberations and at a future Commission meeting.

5. Rhonda Gwartney v. MITF, File #CM3F-2019-06247A

Claimant filed an appeal from the order issued by Administrative Law Judge Curtin. Herbert E. Elias Jr. is the attorney of record for the Claimant and Stefan Wenzel is the attorney of record for the Respondent.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; affirming the order and decision of the Administrative Law Judge and issuing an order to that effect; or taking preliminary action in the matter to reverse, modify, or remand. If the Commissioners do not fully affirm the order of the Administrative Law Judge, the Commission may instruct Appellate Counsel or staff to draft a proposed order to be considered in further deliberations and at a future Commission meeting.

6. Kamarrah Cunningham v. Walmart Stores Inc. and Walmart Associates Inc. (OWN RISK), File #CM3-2020-05014R

Claimant filed an appeal from the order issued by Administrative Law Judge Egan. Robert A. Flynn is the attorney of record for the Claimant and Steven E. Hanna is the attorney of record for the Respondent.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; affirming the order and decision of the Administrative Law Judge and issuing an order to that effect; or taking preliminary action in the matter to reverse, modify, or remand. If the Commissioners do not fully affirm the order of the Administrative Law Judge, the Commission may instruct Appellate Counsel or staff to draft a proposed order to be considered in further deliberations and at a future Commission meeting.

7. Jeffery Hurst v. Northeastern A&M College and State of Oklahoma Consolidated Workers Compensation Program, File #CM3-2021-05934X

Respondent filed an appeal from the order issued by Administrative Law Judge Curtin. Bryce A. Hill is the attorney of record for the Claimant and Cynthia J. Braly is the attorney of record for the Respondent.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; affirming the order and decision of the Administrative Law Judge and issuing an order to that effect; or taking preliminary action in the matter to reverse, modify, or remand. If the

Commissioners do not fully affirm the order of the Administrative Law Judge, the Commission may instruct Appellate Counsel or staff to draft a proposed order to be considered in further deliberations and at a future Commission meeting.

8. Pauline Hernandez v. Cintas Corp. and Farmington Casualty Co., File #CM3-2021-02415H

Respondent filed an appeal from the order issued by Administrative Law Judge Blodgett. Stacey Lobaugh is the attorney of record for the Claimant and Robert P. Powell is the attorney of record for the Respondent.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; affirming the order and decision of the Administrative Law Judge and issuing an order to that effect; or taking preliminary action in the matter to reverse, modify, or remand. If the Commissioners do not fully affirm the order of the Administrative Law Judge, the Commission may instruct Appellate Counsel or staff to draft a proposed order to be considered in further deliberations and at a future Commission meeting.

9. Cheryl Gee v. City of Tulsa, File #CM3-2021-05276W

Respondent filed an appeal from the order issued by Administrative Law Judge McMillin. Arthur H. Adams is the attorney of record for the Claimant and Cyrus Nathaniel Lawyer is the attorney of record for the Respondent.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; affirming the order and decision of the Administrative Law Judge and issuing an order to that effect; or taking preliminary action in the matter to reverse, modify, or remand. If the Commissioners do not fully affirm the order of the Administrative Law Judge, the Commission may instruct Appellate Counsel or staff to draft a proposed order to be considered in further deliberations and at a future Commission meeting.

10. Anita Wagner v. Macys Inc. (OWN RISK), File #CM3-2020-02294R

Respondent filed an appeal from the order issued by Administrative Law Judge Inhofe. Susan H. Jones is the attorney of record for the Claimant and Chad R. Whitten is the attorney of record for the Respondent.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; affirming the order and decision of the Administrative Law Judge and issuing an order to that effect; or taking preliminary action in the matter to reverse, modify, or remand. If the Commissioners do not fully affirm the order of the Administrative Law Judge, the Commission may instruct Appellate Counsel or staff to draft a proposed order to be considered in further deliberations and at a future Commission meeting.

C. Commission Consideration of Adoption of Final Order in the Following Cases:

1. Allan Hare v. MITE, File #CM3F-2019-04761J

Claimant filed an appeal from the order issued by Administrative Law Judge Curtin. Ray Lahann is the attorney of record for the Claimant and Stefan Wenzel is the attorney of record for the Respondent.

This case came on for Oral Argument on November 18, 2022. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission took this case under advisement.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; affirming the order and decision of the Administrative Law Judge and issuing an order to that effect; or taking preliminary action in the matter to reverse, modify, or remand. If the Commissioners do not fully affirm the order of the Administrative Law Judge, the Commission may instruct Appellate Counsel or staff to draft a proposed order to be considered in further deliberations and at a future Commission meeting.

2. James Crittenden Jr. v. MITE, File #CM3F-2019-07602A

Claimant filed an appeal from the order issued by Administrative Law Judge Blodgett. McCaffrey & Associates are the attorneys of record for the Claimant and Michael A. Fagan is the attorney of record for the Respondent.

This case came on for Oral Argument on November 18, 2022. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission took this case under advisement.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; affirming the order and decision of the Administrative Law Judge and issuing an order to that effect; or taking preliminary action in the matter to reverse, modify, or remand. If the Commissioners do not fully affirm the order of the Administrative Law Judge, the Commission may instruct Appellate Counsel or staff to draft a proposed order to be considered in further deliberations and at a future Commission meeting.

3. Raymond Miller v. La Quinta Inn, Global Core Stillwater LLC, and Employers Preferred Insurance Co. (FKA AMCOMP PREFERRED), File #CM3-2020-00616F

Claimant filed an appeal from the order issued by Administrative Law Judge Egan. Michael R. Green appeared for the Claimant and Kelley Bodell appeared for the Respondent.

This case came on for Oral Argument on May 20, 2022. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission took this case under advisement.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; affirming the order and decision of the Administrative Law Judge and issuing an order to that effect; or taking preliminary action in the matter to reverse, modify, or remand. If the Commissioners do not fully affirm the order of the Administrative Law Judge, the Commission may instruct Appellate Counsel or staff to draft a proposed order to be considered in further deliberations and at a future Commission meeting.

4. Wanda Gibby v. MITE, File #CM3F-2019-07638F

Claimant filed an appeal from the order issued by Administrative Law Judge Blodgett. J. Kord Hammert appeared for the Claimant and Michael A. Fagan appeared for the Respondent.

This case came on for Oral Argument on May 20, 2022. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission took this case under advisement.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; affirming the order and decision of the Administrative Law Judge and issuing an order to that effect; or taking preliminary action in the matter to reverse, modify, or remand. If the Commissioners do not fully affirm the order of the Administrative Law Judge, the Commission may instruct Appellate Counsel or staff to draft a proposed order to be considered in further deliberations and at a future Commission meeting.

5. Norma Chavez v. Lopez Foods Inc. (OWN RISK), File #CM3A-2017-07276R

Respondent filed an appeal from the order issued by Administrative Law Judge Egan. W. Wicker and James G. Devinney appeared for the Claimant. Norman Lemonik appeared for the Respondent.

This case came on for Oral Argument on August 26, 2022. After reviewing the record, hearing oral arguments, and deliberating, Commissioner Biggs moved to take preliminary action to affirm the decision of the Administrative Law Judge's Order and instructed the law clerk or other staff member to draft a proposed order with finding of facts and conclusions of law, to be considered for continued action at a future meeting.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; affirming the order and decision of the Administrative Law Judge and issuing an order to that effect; or taking preliminary action in the matter to reverse, modify, or remand. If the Commissioners do not fully affirm the order of the Administrative Law Judge, the Commission may instruct Appellate Counsel or staff to draft a proposed order to be considered in further deliberations and at a future Commission meeting.

6. Robert Page v. City of Tulsa (OWN RISK #10435), File #CM3-2020-06114Y

Respondent filed an appeal from the order issued by Administrative Law Judge Inhofe. Micah Felton appeared for the Claimant and Cyrus Nathaniel Lawyer appeared record for the Respondent.

This case came on for Oral Argument on September 16, 2022. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission took this case under advisement.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; affirming the order and decision of the Administrative Law Judge and issuing an order to that effect; or taking preliminary action in the matter to reverse, modify, or remand. If the Commissioners do not fully affirm the order of the Administrative Law Judge, the Commission may instruct Appellate Counsel or staff to draft a proposed order to be considered in further deliberations and at a future Commission meeting.

7. Nancy Gonzalez-Rubio v. Pacific Painting Co. Inc. and Continental National Indemnity Co., File #CM3A-2019-04881X

Respondent filed an appeal from the order issued by Administrative Law Judge Egan. Milly Daniels appeared for the Claimant and Nicole S. Bryant appeared for the Respondent.

This case came on for Oral Argument on September 16, 2022. After reviewing the record, hearing oral arguments, and deliberating, Commissioner Tilly moved to take preliminary action to vacate and remand the decision of the Administrative Law Judge's Order and instructed the law clerk or other staff member to draft a proposed order with finding of facts and conclusions of law, to be considered for continued action at a future meeting.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; affirming the order and decision of the Administrative Law Judge and issuing an order to that effect; or taking preliminary action in the matter to reverse, modify, or remand. If the Commissioners do not fully affirm the order of the Administrative Law Judge, the Commission may instruct Appellate Counsel or staff to draft a proposed order to be considered in further deliberations and at a future Commission meeting.

8. Allen Schuster v. Grady Memorial Hospital (OWN RISK), File #CM3-2021-00425R

Respondent filed an appeal from the order issued by Administrative Law Judge Blodgett. Claimant represented himself, pro se, and Donald A. Bullard appeared for the Respondent.

This case came on for Oral Argument on January 27, 2023. After reviewing the record, hearing oral argument of counsel, and deliberating, Commission Tilly moved to take preliminary action to affirm the order in-part and overrule the order in-part, specifically, to affirm the findings of a compensable injury to the thoracic back; affirm the award of TTD; overrule the finding of compensable injury to the neck; and remand the matter to the ALJ on the appointment of an IME for psych overlay.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; affirming the order and decision of the Administrative Law Judge and issuing an order to that effect; or taking preliminary action in the matter to reverse, modify, or remand. If the Commissioners do not fully affirm the order of the Administrative Law Judge, the Commission may instruct Appellate Counsel or staff to draft a proposed order to be considered in further deliberations and at a future Commission meeting.

9. Jimmie Wilson v. MITF, File #CM3F-2017-01505K

Respondent filed an appeal from the order issued by Administrative Law Judge McMillin. Micah Felton appeared for the Claimant and Stefan Wenzel appeared for the Respondent.

This case came on for Oral Argument on January 27, 2023. After reviewing the record, hearing oral argument of counsel, and deliberating, the Commission Tilly moved to take preliminary action to affirm the administrative law judge's order and find that it's neither contrary to law nor against the clear weight of the evidence.

Possible Action:

Possible action may include, but is not limited to: taking no action; continuing the matter; affirming the order and decision of the Administrative Law Judge and issuing an order to that effect; or taking preliminary action in the matter to reverse, modify, or remand. If the Commissioners do not fully affirm the order of the Administrative Law Judge, the Commission may instruct Appellate Counsel or staff to draft a proposed order to be considered in further deliberations and at a future Commission meeting.

ADJOURNMENT.....Presiding Appellate Officer, Commissioner Tilly